


**FILED**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**MAR 17 2010**

**MEMORANDUM**

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY   
DEPUTY CLERK

Honorable Anthony W. Ishii  
Chief United States District Judge  
Fresno, California

**RE:           DARNEY RAY WHITE**  
**Docket Number: 1:03CR05308-01 AWI**  
**Motion Hearing: April 5, 2010**  
**REQUEST FOR ORDER RELEASING**  
**URINE SPECIMEN**

Your Honor:

On September 13, 2004, the defendant was sentenced by Your Honor to 77 months Bureau of Prisons following a conviction to 18USC 2113(a), Bank Robbery. He was also sentenced to 36 months supervised release, \$19 restitution, and mandatory drug testing. In addition to standard conditions of supervision, he was also ordered to submit to search; participate in drug/alcohol treatment and testing; mental health treatment; and, pay an aftercare co-payment. Supervised release originally commenced on February 20, 2009, and following a revocation, it re-commenced on November 10, 2009.

On December 8, 2009, a Form 12C- Petition for Warrant was submitted to the Court alleging: Charge 1 - Use of a Controlled Substance. An arrest warrant was issued by the Court. He was arrested on December 10, 2009, and appeared before the United States Magistrate Court the following day at which time he was released pending the disposition of this violation. It is noted that the defendant has since submitted a second positive urine test; a superceding Petition is forthcoming.

On March 9, 2010, Ann Voris, Assistant Federal Defender, submitted a Notice of Motion to Dismiss Violation alleging that the defendant's due process was denied in that a request to have the urine specimen in question re-tested at a laboratory of choice had been denied by Kroll Laboratory, the probation office's contract toxicology laboratory, because the laboratory requested, Central Valley Toxicology, Clovis, California, is not certified by the United States Health and Human Services.

According to the Administrative Office of the United States Courts (AOUSC), in accordance to 18 USC 3563(e) and 3583(d), which states in part, "a drug test confirmation shall be a urine drug test confirmed by using gas chromatography/mass spectrometry techniques or such test as the Director of the AOUSC after consultation with the Secretary of Health and Human Services (HHS) may determine to be of equivalent accuracy." Based on the above statutes, the AOUSC consulted with HHS and adopted the HHS certification requirement

**RE: DARNEY RAY WHITE**  
**Docket Number: 1:03CR05308-01 AWI**  
**REQUEST FOR ORDER RELEASING DRUG SPECIMEN**

that any laboratory testing urine specimens must be a HHS certified laboratory. The AOUSC is the holder of the national urinalysis contract for the federal probation services system and sets the requirements for the national urinalysis laboratory testing program. The HHS certification requirement is the highest and most rigorous laboratory requirement for urinalysis testing. It is the AOUSC's position that this requirement ensures the integrity of the urinalysis process and that a fair and accurate "apples-to-apples" comparison is made during the re-analysis. It is noted that Central Valley Toxicology is not an HHS-approved laboratory. Thus Kroll Laboratory, citing contractual obligations, refused to release the urine specimen to Central Valley Toxicology.

It is the Government's position, pursuant to U.S. v. Martin, 984 F.2d 308 (9th Cir. 1993), the defendant has the right to have the urine specimen retested by a laboratory of his choice. The Government also argues the fact that Kroll Laboratory has a contractual agreement with specific vendors should not trump the defendant's right to due process; the validity of the re-test can be challenged at a later time, if necessary.

It is therefore recommended the Court order Kroll Laboratory to release a portion of any urine specimen(s) under question to Central Valley Toxicology, Clovis, California, so that a re-test can be completed. The Government and AOUSC do not object to this request.

Respectfully submitted,

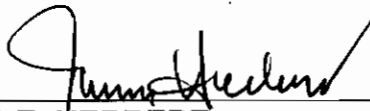


**HUBERT J. ALVAREZ**

**Supervising United States Probation Officer**

Dated: March 16, 2010  
Fresno, California  
HJA;mb

**REVIEWED BY:**



**JAMES E. HERBERT**

**Assistant Deputy Chief United States Probation Officer**

cc: Dawrence W. Rice  
Assistant United States Attorney

Ann H. Voris  
Defense Counsel

RE: **DARNEY RAY WHITE**  
**Docket Number: 1:03CR05308-01 AWI**  
**REQUEST FOR ORDER RELEASING DRUG SPECIMEN**

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IT IS SO ORDERED: ✓

DISAGREE: \_\_\_\_\_

  
\_\_\_\_\_  
**ANTHONY W. ISHII**  
Chief United States District Judge

3-17-10  
DATE